

**SMYTH
REVOCATION OF AGRICULTURAL COVENANT**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Tristan Riddell *TR*

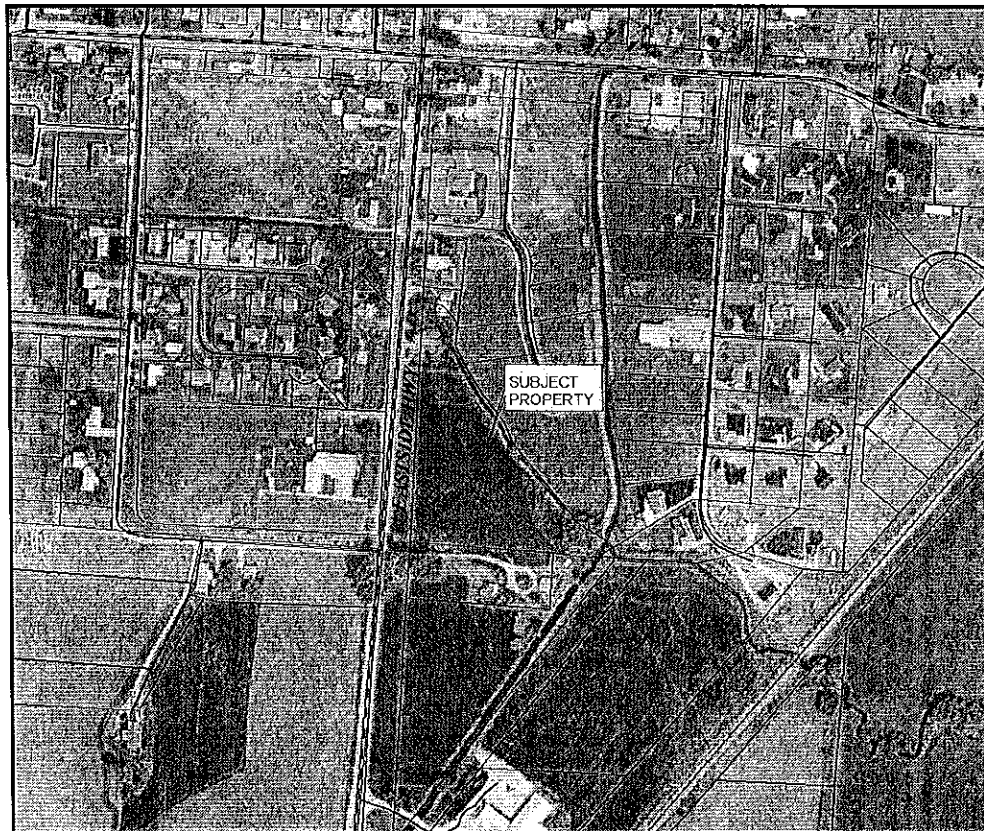
**REVIEWED/
APPROVED BY:** Randy Fifrick

PUBLIC MEETINGS: BCC Public Meeting: 9:00 a.m. April 30, 2009
Deadline for BCC action (35 working days): May 14, 2009

SUBDIVIDER: Virginia Smyth
951 Market Street
Corvallis, MT 59828

REPRESENTATIVE: Applebury Survey
914 U.S. Highway 93
Victor, MT 59875

LOCATION OF REQUEST: The property is located within the Community of Corvallis off Eastside Highway. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

NW ¼ of Section 4, T6N, R20W, P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was deemed sufficient on March 26, 2009. Agencies were notified of the subdivision on July 31, 2008 and April 7, 2009. Comments received from agencies are Exhibits A-1 through A-7 of the staff report. **This subdivision is being reviewed under the Ravalli County Subdivision Regulations (RCSR) amended May 24, 2007.**

LEGAL NOTIFICATION:

Notice of the project was posted on the property and adjacent property owners were notified by certified mail dated April 7, 2009. One public comment has been received to date and is enclosed as Exhibit B-1.

**DEVELOPMENT
PATTERN:**

Subject property:	Vacant
North:	Commercial
South:	Residential
East:	Residential
West:	Commercial/Residential

INTRODUCTION

Currently, residential uses are precluded on the parcel because an agricultural covenant, placed on the property in 1995, allows only agricultural activities. The applicant is proposing to remove the agricultural restriction and build a church. Section 3-6 of the Ravalli County Subdivision Regulations requires development review to occur when an individual proposes to lift an agricultural covenant from a property. Instead of filing a final plan, if the proposal is approved, the applicant will need to file a Certificate of Survey (COS) showing that the agricultural covenant has been lifted. Access to this property is via Eastside Highway.

Staff recommends conditional approval of the proposal.

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS

APRIL 30, 2008

SMYTH REVOCATION OF AGRICULTURAL COVENANT

RECOMMENDED MOTION

That the Smyth Revocation of Agricultural Covenant be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

PLANNING STAFF RECOMMENDED CONDITIONS

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plan to the Planning Department and filed with the final plan:

Notification of Irrigation Facilities and Easements. Within this subdivision there are irrigation easements, as shown on the final plan. All downstream water users have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. Activities associated with the maintenance of irrigation facilities may include the operation of heavy equipment, the occasional burning of ditch vegetation, and the use of herbicides. Downstream water right holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. (*Section 3-2-8(a) and Section 3-2-8(b)(v)(B), RCSR, Effects on Agricultural Water User Facilities*)

Notification of Water Rights. Owner(s) do not currently have the right to take irrigation water out of **Willow Creek or the Surprise Ditch**. Taking water without a water right for any purpose is illegal. Residents should consult with the Montana Department of Natural Resources for questions on water rights. (*Section 3-2-8(b)(v)(B), RCSR, Effects of Agricultural Water User Facilities*)

Notification of No-Build/Alteration Zones. Within this subdivision there is a no-build/alteration zone, as shown on the plan. No new structure may be constructed in this area. No new utilities may be constructed in this area. No fill may be placed in this area and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through this area are not permitted. However, activities directly associated with the maintenance of irrigation ditches, such as noxious weed control and clearing vegetation within the ditches, are allowed. The proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native vegetation (trees, shrubs) is also allowed. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment and Public Health & Safety*)

Notification of Proximity to Willow Creek. This subdivision is located in close proximity to Willow Creek. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the creek channel. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health and Safety*)

Notification of Proximity to a Potential Dam Inundation Area in the Event of a Catastrophic Failure of the Painted Rocks Reservoir Dam. A portion of the property may be located within the dam inundation area for the Painted Rocks Reservoir Dam. The Painted Rocks Reservoir Dam is owned and operated by the State of Montana, Department of Natural Resources and Conservation District, Water Resources Division, Dam Safety Program (48 North Last Chance Gulch, P.O. Box 201601, Helena, Montana, 59620-1621). A map of the probable extent of the inundation area is included as an exhibit to this document [the subdivider shall include the exhibit as an attachment]. (Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health and Safety)

Flood Hazard Zone for Willow Creek. The lowest enclosed floor of each structure (including crawlspaces and basements) and mechanical utilities of all proposed structures should be a minimum of two (2) feet above the modeled/calculated 100-year floodplain elevation or (2) feet above the highest adjacent grade (whichever is greater). A map showing the extent of the 100-year floodplain, including elevations, is included as an exhibit to this document [the subdivider shall include the exhibit as an attachment]. (Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health and Safety)

Recommendation for Flood Insurance. Although not within the FEMA-mapped floodplain, the Floodplain Administrator recommends that property owners obtain flood insurance since standard homeowner's insurance policies do not cover flood damages. (Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health and Safety)

Notification of Common Access Maintenance Agreement. The common access is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A common access maintenance agreement was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. (Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services)

Notification Regarding Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health and Safety)

Notification of Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their structures tested for radon. Contact the Ravalli County Environmental Health Department for further information. (Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health & Safety)

2. Protective covenants for this subdivision shall be submitted with the final plan that include the following provisions:

Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Each lot owner shall obtain or be provided and read a copy of the brochure "Living with wildlife," available from the Montana Fish, Wildlife & Parks office in Missoula for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at www.fwp.mt.gov. (Section 3-2-8(b)(v), RCSR, *Effects on Agriculture and Wildlife & Wildlife Habitat*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens, fruit trees or orchards** are a major wildlife attractant, and fruit-bearing trees and shrubs can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or vegetable material can attract bears, skunks and other wildlife. Gardens should be fenced with one-foot of fencing material below ground level and be at least eight feet in height, in order to discourage wildlife such as deer from feeding in gardens. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries.
- c. If stored outdoors, **garbage** should be in secure bear-resistant containers; otherwise it should be stored indoors prior to curbside pick-up or transport to a centralized garbage collection site, in order to avoid attracting wildlife such as bears and raccoon. If curbside garbage pick-up is available, garbage cans may not be set out until the morning of garbage pickup and must be brought in no later than that same evening.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears. If used, bird feeders must: a) be suspended a minimum of 15 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plane located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal

for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

- g. **Pet food and livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets and/or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h. **Barbecue grills** should be stored indoors, and permanent outdoor barbecue grills are discouraged. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- j. **Compost piles** can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)

Riparian Use Guidelines. The following covenants, designed to guide use of the “no build/alteration zone”, shall apply:

- a. No building, no new roads or alteration is allowed in the no-build/alteration zone.
- b. No motorized use is allowed in the no-build/alteration zone.
- c. It is illegal to modify the streambed or streambanks of a perennial stream without a “310” permit (Montana Natural Streambed and Land Preservation Act). Any stream crossings need to follow any and all local and /or state regulations relative to bridge/culvert construction materials/methods. Certain other actions near a stream may require state and/or federal permit(s). Contact the Bitterroot Conservation District office for further information.
- d. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the no-build/alteration zone. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover. Wood also stores sediment that is used for spawning. Dead trees also function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- e. Do not plant lawns within the no-build/alteration zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- f. In summary, allow riparian areas (the creek and its no-build/alteration zone) to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Agriculture and Natural Environment*)

No-Build/Alteration Zones. Within this subdivision there is a no-build/alteration zone, as shown on the COS. No new structure may be constructed in this area. No new utilities may be constructed in this area. No fill may be placed in this area and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through this area are not permitted. However, activities directly associated with the maintenance of irrigation ditches, such as noxious weed control and clearing vegetation within the ditches, are allowed. The proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native vegetation (trees, shrubs) is also allowed. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment and Wildlife & Wildlife Habitat*)

Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted Fire Protection Standards, which require lot owners to post County-issued addresses at the intersection of the accessway leading to each lot as soon as construction on the structure begins. (*Effects on Local Services and Public Health & Safety*)

Access Requirements for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Fire Protection Standards. All accesses over 150' in length must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information. (*Effects on Local Services and Public Health & Safety*)

Archeological Resources. If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. (*Section 3-2-8(b)(v), RCSR, Effects on Natural Environment*)

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along the Eastside Highway frontage of the subdivision. The only legal access point for the lot is the common access point as approved by MDT. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety*)

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. (*Effects on all six criteria*)

3. The subdivider shall include an RSID/SID waiver in a notarized document filed with the final plan that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety*)
4. The subdivider shall provide evidence with the final plan submittal that they have applied for County-issued address for all lots. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)

5. Prior to final plan approval, the subdivider shall provide a letter from the Corvallis Rural Fire District stating that the subdivider has provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot. Alternatively, the subdivider may provide evidence that a \$900 contribution has been submitted to the Corvallis Rural Fire District with the final plan submittal in lieu of the required water supply or water storage for fire protection. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)
6. The following statement shall be shown on the COS: "The All Valley Fire Council, which includes the Corvallis Rural Fire District, has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information". (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)
7. The subdivider shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on Public Safety Services (Sheriff, E-911, OEM). The subdivider shall ensure that the decided upon mitigation has been implemented prior to final plan approval. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health & Safety*)
8. A 25 foot no-build/alteration zone extending horizontally from the modeled 100-year floodplain of Willow Creek shall be shown on the COS. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment and Public Health & Safety*)
9. The following statement shall be shown on the COS: "The lowest enclosed floor of each structure (including crawlspaces and basements) and mechanical utilities of all proposed structures should be a minimum of two (2) feet above the modeled/calculated 100-year floodplain elevation or (2) feet above the highest adjacent grade (whichever is greater)." (*Section 3-2-8(b)(v)(B), RCSR, Public Health & Safety*)
10. The COS shall show a no-ingress/egress zone along the Eastside Highway frontage of the subdivision. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health and Safety*)
11. The subdivider shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on Public Safety Services (Sheriff, E-911, OEM). The subdivider shall ensure that the decided upon mitigation has been implemented prior to final plan approval. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Agriculture*)

FINAL PLAN REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)

The following items shall be included in the final plan submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.

1. A statement from the project surveyor or engineer prior to final plan approval outlining how each final plan requirement or condition of approval has been satisfied.
2. One paper and two Mylar 18" x 24" or larger copies of the COS, completed in accordance with the Uniform Standards for Final Subdivisions Plans (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) The COS shall conform to the preliminary plan decision. In accordance with the conditions of approval and RCSR Section 3-4-4(a)(ii), the following features are required on the COS:

- Project name
 - Title block
 - Certificate of registered owner – notarized
 - Certificate of registered land surveyor with seal
 - Certificate of governing body approval
 - Signature block for Clerk and Recorder, preferably in lower right hand corner
 - Certificate of public dedication
 - Certificate of park cash-in-lieu payment
 - Other certifications as appropriate
 - North arrow
 - Graphic scale
 - Legal description
 - Property boundaries (bearings, lengths, curve data)
 - Pertinent section corners and subdivision corners
 - Names of adjoining subdivisions/certificates of survey
 - Monuments found
 - Witness monuments
 - Acreage of subject parcel
 - Curve data (radius, arc length, notation of non-tangent curves)
 - Line data (lengths to tenths of a foot, angles/bearings to nearest minute)
 - Lots and blocks designated by number (dimensions/acreage)
 - Easements/rights of ways (location, width, purpose, ownership)
 - Dedication for public use
 - No-build/alteration zones
 - No-ingress/egress zones
 - Water resources (rivers, ponds, etc.)
 - Floodplains
 - Irrigation canals including diversion point(s), etc.
 - Existing and new roads (names, ownership, etc.)
 - Existing and proposed utility, irrigation, and drainage easements, as shown on the preliminary plan, shall be shown on the final plan.
 - No-build/alteration and no-build zones shall be shown on the plan as shown on the preliminary plan.
3. The original copy of the decision on the Revocation of Agricultural Covenant shall be submitted with the final plan submittal.
 4. Any variance decisions shall be submitted with the final plan submittal.
 5. Copies of extensions of the preliminary plan approval period shall be submitted with the final plan submittal.
 6. The final plan review fee shall be submitted with the final plan submittal.
 7. Consent to Plan form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plan submittal.
 8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plan submittal.
 9. The DEQ Certificate of Development Approval or RCEH approval shall be submitted with the final plan submittal.
 10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plan submittal.
 11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the development shall be submitted with the final plan submittal.

12. Road and Driveway approach and encroachment permits from RCRBD and/or MDOT as appropriate.
13. A Common Access Maintenance Agreement, signed and notarized, shall be submitted with the final plan submittal.
14. Utility availability certification(s) shall be submitted with the final plan submittal.
15. A notarized statement from each downstream water user specifically authorizing any alteration, such as installation of culverts, bridges, etc., or relocation of an irrigation ditch.
16. Protective covenants to be filed with the final plan that are signed and notarized shall be submitted with the final plan submittal.
17. Copies of permits issued by the Bitterroot Conservation District or the US Army Corps of Engineers when construction occurs on environmentally sensitive features shall be submitted with the final plan submittal.
18. A copy of the letter sent to the Corvallis School District stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the development on the school district that are not related to capital facilities; shall be submitted with the final plan submittal.
19. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plan approval and certified by the developer, Professional Engineer, or contractor, as may be appropriate and required. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2).
 - Specific infrastructure improvements potentially required for this subdivision are the paving of a common access in accordance with an approved MDOT approach permit and a water supply that meets the requirements of the Corvallis Fire District (if cash is not contributed in lieu of).
20. A Revocation of Agricultural Covenant document shall be submitted with the final plan submittal. *(Staff Note: Please contact the Planning Department for a sample document.)*

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plan unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. Existing utilities are located along Eastside Highway. (Smyth Agricultural Revocation File)
2. *Existing and proposed utility easements are required to be shown on the COS. (Final Plan Requirement 2)*

Conclusion of Law

The proposed subdivision application provides for utility easements.

B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plan and in any instrument transferring the parcel.

Findings of Fact

1. The subdivision is accessed from Eastside Highway. (Smyth Agricultural Revocation File)
2. Eastside Highway is a State-maintained road providing legal and physical access. (Ravalli County GIS)
3. *To ensure legal and physical access to the subdivision, the subdivider is required to submit a final approach permit from the Montana Department of Transportation prior to final plan approval. (Final Plan Requirement 12)*

Conclusion of Law

With the requirement of final plan approval, legal and physical access will be provided.

C. Assures that all required public or private improvements will be installed before final plan approval, or that their installation after final plan approval will be guaranteed as provided by Section [3-4-2] of these regulations.

Findings of Fact

1. The subdivider is required to submit evidence that the improvements have been made in accordance with the conditions of approval and requirements of final plan approval and certified by the subdivider prior to final plan approval (RCSR 3-4-4(a)(xxvi))
2. *Specific infrastructure improvements potentially required for this subdivision are the paving of a common access in accordance with an approved MDOT approach permit and a water supply that meets the requirements of the Corvallis Fire District (if cash is not contributed in lieu of). (Final Plan Requirement 19)*

Conclusion of Law

The final plan requirements or an improvements agreement and guaranty will ensure that the improvements are installed.

D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plan is submitted.

Findings of Fact

1. 76-3-504(1)(j), MCA states that when a subdivision creates parcels with lot sizes averaging less than 5 acres, the subdivider is required to:

- (a) Reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
 - (b) If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
 - (c) Reserve and sever all surface water rights from the land.
- 2. No lots will be created with this proposal. (Smyth Agricultural Revocation File)
 - 3. The property does not have water rights. (Smyth Agricultural Revocation File)
 - 4. *Condition 1 notifies the landowner of irrigation facilities and easements on or adjacent to the property and that the landowner does not have the right to take irrigation water from these facilities.*

Conclusion of Law

With the requirements and condition of final plan approval, this prerequisite has been met.

E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plan is submitted.

Findings of Fact

- 1. 76-3-504(1)(k) MCA states that, except as provided in subsection (1)(k)(ii) (the proposal does not meet the criteria in this subsection), the subdivider is required to establish ditch easements in the subdivision that:
 - (a) Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - (b) Are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (c) Prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- 2. An existing irrigation ditch easement extending 30 feet from the centerline of the Surprise Ditch traverses the southeastern corner of the property. (Smyth Agricultural Revocation Preliminary Plan)
- 3. The placement of structures or the planting of vegetation, other than grass, within the irrigation easement is prohibited. (76-3-504(1)(k) MCA).
- 4. *To ensure that the provisions of 76-3-504(1)(k) MCA are met, the following requirement and conditions shall be met prior to final plan approval:*
 - (a) *The existing irrigation easement is required to be shown on the COS. (Final Plan Requirement 2)*
 - (b) *A notification that the placement of structures or the planting of vegetation, other than grass, is prohibited within irrigation ditch easements without the written permission of the ditch owner shall be included in the notifications document. (Condition 1)*

Conclusion of Law

With the requirement and condition of final plan approval, this prerequisite will be met.

F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.

Finding of Fact

No new lots will be created with the lifting of this agricultural covenant. (Smyth Agricultural Revocation File)

Conclusion of Law

This prerequisite is not applicable.

G. Overall Findings and Conclusions on Prerequisite Requirements

There is adequate evidence to demonstrate compliance with each prerequisite to approval.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plan, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. If a property owner wants to remove an agricultural covenant, the owner shall comply with RCSR Chapters 1, 2, 3, 5 and 8 as they pertain to first minor subdivisions prior to filing a written agricultural covenant revocation with a Certificate of Survey, upon which the revocation is recited. (RCSR Section 3-6)
2. This development plan proposal has followed the necessary application procedures and has been reviewed within the procedures provided in Chapters 1, 2, 3 and 5 of the Ravalli County Subdivision Regulations. Because no variances are requested, Chapter 8 does not apply. (Staff Determination)

Conclusion of Law

The procedures for the application and review of this proposed development as outlined in Chapters 1,2, 3, and 5 of the RCSR, have been followed.

B. Applicable zoning regulations.

Findings of Fact

1. The unincorporated areas of Ravalli County are not zoned, excepting voluntary zoning districts. (Clerk & Recorder's Office)
2. The property is not within one of Ravalli County's adopted voluntary zoning districts. (Smyth Agricultural Revocation File)

Conclusion of Law

There are no zoning regulations that apply to the property.

C. Existing covenants and/or deed restrictions.

Finding of Fact

1. The property is currently subject to an agricultural covenant. The covenant states that the subject property shall be used "exclusively for agricultural purposes" and that the covenant may only be removed by the mutual consent of the property owner and the Ravalli County Board of Commissioners. (Smyth Agricultural Revocation File, Book 215 Page 388)
2. There are no other covenants or deed restrictions on the property. (Smyth Agricultural Revocation File)

Conclusion of Law

With the revocation of agricultural covenant, neither covenants nor deed restrictions will apply.

D. Other applicable regulations.

Findings of Fact

1. Following are regulations that may apply to this subdivision:
 - (a) Montana Subdivision and Planting Act, Title 76, Chapter 3, MCA
 - (b) Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
 - (c) Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
 - (d) Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
 - (e) Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. Prior to final plan approval, the subdivider is required to submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)
3. The applicants were made aware of the applicable regulations at the pre-application conference held on June 21, 2007. (Smyth Agricultural Revocation File)

Conclusion of Law

With the requirements of final plan approval, the application will meet all of the applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed agricultural revocation on 4.28 acres will result in the ability to construct one unit requiring sanitation facilities. The application states that a church will be constructed. (Smyth Agricultural Revocation File)
2. Parcels surrounding the subject property are classified for tax purposes as residential rural, commercial rural, vacant rural and agricultural rural. The subject property is classified as agricultural rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services and 2005 Aerial Photography created by the National Agricultural Imagery Program)
3. According to the Web Soil Survey for Ravalli County, approximately 100% of the soils located on the property were identified as Hamilton-Overwhich complex which is categorized as "Prime farmland if irrigated". (Subdivision Application and Web Soil Survey, U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS))
4. The subdivider submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated there is a small infestation of Canada thistle on the property and presence of common tansy and hoary allysum within the Eastside Highway right-of-way. (Smyth Agricultural Revocation File)
5. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
6. *Following are conditions and requirements of final plan approval that will mitigate the impacts of the subdivision on agriculture:*
 - (a) *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plan approval. (Final Plan Requirement 11)*
 - (b) *A noxious weed control provision shall be included in the protective covenants filed with the final plan for this subdivision. (Condition 2)*

- (c) *The subdivider shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on agriculture. The subdivider shall ensure that the decided upon mitigation has been implemented prior to final plan approval. (Condition 11)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plan approval, impacts on agriculture will be reduced.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. There are no water rights associated with the subject property. (Smyth Agricultural Revocation File)
2. An existing irrigation ditch easement extending 30 feet from the centerline of the Surprise Ditch traverses the southeastern portion of the property. (Smyth Agricultural Revocation Preliminary Plan)
3. The placement of structures or the planting of vegetation other than grass within the irrigation easement is prohibited. (76-3-504(1)(k) MCA).
4. *Following are conditions and requirements of final plan approval that will mitigate the impacts of the subdivision on agricultural water user facilities:*
 - (a) *Irrigation easements are required to be shown on the COS, as shown on the preliminary plan. (Final Plan Requirement 2)*
 - (b) *A notification stating that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner shall be included in the notifications document. (Condition 1)*
 - (c) *A notification stating the landowner does not currently have the right to take irrigation water out of Willow Creek or the Surprise Ditch. Taking water without a water right for any purpose is illegal. The landowner should consult with the Montana Department of Natural Resources for questions on water rights. (Condition 1)*

Conclusion of Law

With the mitigating conditions of approval and requirements of final plan approval, impacts on agricultural water user facilities will be reduced.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

Fire Department

1. The subdivision is located within the Corvallis Rural Fire District. (Smyth Agricultural Revocation Subdivision File)
2. In an email received August 6, 2008, the Corvallis Rural Fire District states that they have no objections or concerns with the agricultural revocation request. (Exhibit A-1)
3. In a letter dated May 29, 2008, the Corvallis Rural Fire District requested that the cash-in-lieu of water supply fee be increased from \$500 to \$900. In a subsequent letter dated June 18, 2008, the district submitted materials to support this request. (Exhibit A-2)
4. The Ravalli County Fire Council, which includes the Corvallis Rural Fire District, has adopted Fire Protection Standards (outlined in document from the Hamilton Rural Fire District) that address access, posting of addresses, and water supply requirements. (Exhibit A-3)
5. *The following conditions will mitigate impacts of the subdivision on the Fire District:*
 - (a) *Provisions in the covenants requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
 - (b) *The subdivider shall provide evidence with the final plan submittal that they have applied for a County-issued address. (Condition 4)*

- (c) *Prior to final plan approval, the subdivider shall provide a letter from the Corvallis Rural Fire District stating that the subdivider has provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdivider may provide evidence that a \$900 contribution has been made to the Corvallis Rural Fire District with the final plan submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)*
- (d) *The following statement shall be shown on the COS: "The Ravalli County Fire Council, which includes the Corvallis Rural Fire District, has adopted Fire Protection Standards. All accesses over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information". (Condition 6)*

School District

- 6. The proposed agricultural revocation is located within the Corvallis School District. (Smyth Agricultural Revocation File)
- 7. The proposal states that a church will be constructed on the subject property. Should a church be constructed, no additional children would be added to the School District. (Smyth Agricultural Revocation File, Staff Determination)
- 8. Notification letters were sent to the Corvallis School District requesting comments on July 31, 2008 and April 7, 2009. No comments have been received to date. (Smyth Ag Revocation Subdivision File)

Public Safety

- 9. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Smyth Agricultural Revocation File)
- 10. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on July 31, 2008 and April 7, 2009. No comments have been received to date. (Smyth Agricultural Revocation File)
- 11. Taxes from new construction may not be immediately available to law enforcement services, E-911, or the Office of Emergency Management (OEM). There is no available information on the average amount of time between when public safety services begin to serve a new property and when public safety services receive tax money from that property. (Staff Determination)
- 12. The subdivider has not proposed a contribution to offset any impacts to public safety services. (Smyth Agricultural Revocation File)
- 13. *To mitigate impacts on Ravalli County Public Safety Services, the subdivider shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on Public Safety Services (Sheriff, E-911, OEM). The subdivider shall ensure that the decided upon mitigation has been implemented prior to final plan approval. (Condition 7)*

Roads

- 14. The lifting of the agricultural covenant will not create any new lots. According to the MDOT approach permit, it is estimated that the development of a church will generate a total of 110 vehicular trips per weekend. (Smyth Agricultural Revocation File)
- 15. The approach permit from Eastside Highway has preliminary approval from MDOT. (Smyth Agricultural Revocation File)
- 16. Eastside Highway is a State-maintained road. (Smyth Agricultural Revocation File and Ravalli County GIS Data)
- 17. *To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:*
 - (a) *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from DEQ shall be submitted prior to final plan approval, if applicable. (Final Plan Requirement 10)*

- (b) *A Common Access Maintenance Agreement shall be signed, notarized, and submitted. (Final Plan Requirement 13)*
- (c) *The covenants shall limit access through no-ingress/egress zones along the Eastside Highway frontage, excepting the approved common approach, as approved by MDOT. (Conditions 2 and 10, and Final Plat Requirement 2)*
- (d) *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plan shall address these services/facilities. (Condition 3)*
- (e) *Prior to final plan approval, the subdivider shall construct the common approach in accordance with, and submit the final approach permit, as approved by MDOT. (Final Plat requirements 12 and 19)*

Ambulance Services

- 18. Ambulance services will be provided by the Marcus Daly Memorial Hospital EMS Department.
- 19. Marcus Daly Hospital was contacted on July 31, 2008 and April 7, 2009, but no comments have been received to date. (Smyth Ag Revocation Subdivision File)
- 20. *To mitigate impacts on emergency services, the subdivider shall provide evidence with the final plan submittal that they have applied for a County-issued address. (Condition 4)*

Water and Wastewater Districts

- 21. An individual well and connection to the Corvallis County Sewer District is proposed to serve the lot. (Smyth Agricultural Revocation File)
- 22. *The subdivider is required to submit a final DEQ Certificate of Subdivision Approval prior to final plan approval. (Final Plan Requirement 9)*

Solid Waste Services

- 23. Bitterroot Disposal provides service to this site. (Smyth Agricultural Revocation File)
- 24. Notification letters were sent to Bitterroot Disposal requesting comments on July 31, 2008 and April 7, 2009, but no comments have been received to date. (Smyth Agricultural Revocation File)

Utilities

- 25. The proposed subdivision will be served by Ravalli Electric Cooperation and Qwest Communications. Utility companies have been notified of the proposed subdivision. (Smyth Agricultural Revocation File)
- 26. Notification letters were sent to the utility companies requesting comments on July 31, 2008 and April 7, 2009. No comments have been received to date. (Smyth Agricultural Revocation File)
- 27. *The following requirements will mitigate impacts of the subdivision on local utilities:*
 - (a) *Existing and proposed utility easements shall be shown on the final plan. (Final Plan Requirement 2)*
 - (b) *The subdivider shall submit utility availability certifications from Ravalli Electric Cooperation and Qwest Communications prior to final plan approval. (Final Plan Requirement 14)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plan approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

Ground/Surface Water

- 1. The subdivider is proposing an individual well and connection to the Corvallis County Sewer District for the lot. (Smyth Agricultural Revocation File).

2. The subdivider submitted water and sanitation information per MCA 76-3-622 for the proposed systems. (Smyth Agricultural Revocation File)
3. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-4, MCA 76-3-622)
4. *To mitigate impacts on the natural environment, the subdivider is required to submit a final DEQ Certificate of Subdivision Approval prior to final approval. (Final Plan Requirement 9)*
5. The Surprise Ditch borders the southeastern portion of the property. (Ravalli County GIS, Smyth Agricultural Revocation Preliminary Plan)
6. Willow Creek borders the eastern portion of the property. (Ravalli County GIS, Smyth Agricultural Revocation Preliminary Plan)
7. A Floodplain Analysis was conducted on Willow Creek and was approved by the Ravalli County Floodplain Administrator on March 6, 2009 (Exhibit A-5) with the following recommended mitigating conditions to limit the effects of the proposal on the natural environment and public health and safety:
 - (a) *A 25 foot no-build/alteration zone shall extend horizontally from the modeled 100-year floodplain for Willow Creek. The no-build/alteration zone should also be inclusive of the modeled floodplain and the creek. (Final Plan Requirement 2 and Condition 8)*
 - (b) *The lowest enclosed floor (including crawlspaces and basements) and mechanical utilities of all proposed structures should be a minimum of two (2) feet above the modeled/calculated 100-year floodplain elevation or (2) feet above the highest adjacent grade (whichever is greater). This shall be included within the Notifications Document and as language on the face of the final plan. (Conditions 1 and 9)*
 - (c) *"Although not within the FEMA-mapped floodplain, the Floodplain Administrator recommends that property owners obtain flood insurance since standard homeowner's insurance policies do not cover flood damages." This language shall be included within the Notifications Document. (Condition 1)*

Vegetation

8. The subdivider submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated there is a small infestation of Canada thistle on the property and presence of common tansy and hoary allysum within the Eastside Highway right-of-way. (Smyth Agricultural Revocation File)
9. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
10. *To mitigate impacts on the natural environment, the following condition and requirement shall be met:*
 - (a) *A noxious weed control provision shall be included in the protective covenants filed with the final plan for this subdivision. (Condition 2)*
 - (b) *A noxious weed control plan shall be submitted with the final plan. (Final Plan Requirement 11)*

Light Pollution

11. The addition of a church in this area has the potential to increase light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark Sky Association)
12. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 1)*

Archaeological Resources

14. There are no known sites of historical significance on the property. (Smyth Agricultural Revocation File)
15. *To mitigate possible impacts on any potential sensitive historical, cultural, archaeological, paleontological, and/or scenic sites, the following statement shall be included in the covenants: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the subdivider will contact the State Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 2)*

Conclusion of Law:

With the mitigating conditions and requirements of final plan approval, impacts on the natural environment will be reduced.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

1. In a letter dated September 4, 2008, FWP recommended living with wildlife and riparian area covenants. In addition FWP recommended that a 100' no-build/alteration zone be placed extending horizontally from Willow Creek from the western high water mark. (Exhibit A-6)
2. According to the Montana Natural Heritage Program (MNHP) in June of 2007, the Bull Trout, Townsend's Big-eared Bat, Fringed Myotis, and Gray Wolf were identified as species of concern as they have been known to exist in the same section as the proposed subdivision. (Smyth Agricultural Revocation Application).
3. A Sensitive Species Waiver was completed and granted as the property did not provide habitat for any of the identified species. (Exhibit A-7)
4. *To mitigate impacts on wildlife, the covenants shall include sections pertaining to living with wildlife and riparian areas. (Condition 2)*

Conclusion of Law:

With the mitigating condition of approval, impacts on wildlife & wildlife habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

Traffic Safety

1. Access is proposed off Eastside Highway, an existing State-maintained roadway. (Smyth Agricultural Revocation File)
2. *The requirements and conditions listed under Roads in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

Emergency Vehicle Access and Response Time

3. The proposed subdivision will be served by the Corvallis Rural Fire Department, the Ravalli County Sheriff's Office, Ravalli County E-911, the Ravalli County Department of Emergency Services, Missoula Emergency Services, and Marcus Daly Memorial Hospital EMS Department. (Smyth Agricultural Revocation Application)
4. *The requirements and conditions listed under Fire District, Law Enforcement and County Emergency Services, Ambulance Services, and Roads in Criterion 3 will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

Water and Wastewater

5. The subdivider is proposing an individual well and connection to the Corvallis County Sewer District. The subdivider submitted water and sanitation information per MCA 76-3-622 for the proposed systems. (Smyth Agricultural Revocation File)
6. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-4, MCA 76-3-622)
7. *The subdivider is required to submit a final DEQ Certificate of Subdivision Approval prior to final plan approval. (Final Plan Requirement 9)*

Natural and Man-Made Hazards

8. Willow Creek borders the western portion of the property. (Ravalli County GIS, Smyth Ag Revocation Preliminary Plan)
9. A Floodplain Analysis was conducted on Willow Creek and was approved by the Ravalli County Floodplain Administrator on March 6, 2009 (Exhibit A-5) with the following recommended mitigating conditions to limit the effects of the proposal on the natural environment and public health and safety:
 - (a) *A 25 foot no-build/alteration zone shall extend horizontally from the modeled 100-year floodplain for Willow Creek. The no-build/alteration zone should also be inclusive of the modeled floodplain and the creek. (Final Plan Requirement 2 and Condition 8)*
 - (b) *The lowest enclosed floor (including crawlspaces and basements) and mechanical utilities of all proposed structures should be a minimum of two (2) feet above the modeled/calculated 100-year floodplain elevation or (2) feet above the highest adjacent grade (whichever is greater). This shall be included within the covenants and as language on the face of the final plan. (Conditions 1 and 9)*
 - (c) *"Although not within the FEMA-mapped floodplain, the Floodplain Administrator recommends that property owners obtain flood insurance since standard homeowner's insurance policies do not cover flood damages." This language shall be included within the Notifications Document. (Condition 1)*
10. A portion of the property lies within the Painted Rocks Dam inundation area. (Ravalli County GIS Department data and Smyth Agricultural Revocation Preliminary Plan)
11. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
12. According to the Web Soil Survey for Ravalli County, there are no soils rated as "very limited" for building and road construction. (Smyth Agricultural Revocation File and Web Soil Survey, U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS))
13. *To mitigate the impacts of this subdivision on public health and safety, the following conditions and requirements shall be met:*
 - (a) *A notification of the no-build/alteration zone shall be included in both the covenants and Notifications Document. (Conditions 1 and 2)*
 - (b) *The Notifications Document shall include statements regarding the proximity of the property to Willow Creek and the Painted Rocks Dam inundation area. (Condition 1)*
 - (c) *To mitigate the impacts of light pollution stemming from new construction, the Notifications Document shall include a provision recommending full cut-off lighting on new construction. (Condition 1)*
 - (d) *The Notifications Document shall include a statement regarding radon exposure. (Condition 1)*

Conclusion of Law:

With the mitigating conditions and requirements of final plan approval impacts on public health & safety will be reduced.

Tristan Riddell

From: Wendy Madsen [cvfd@cybernet1.com]
Sent: Wednesday, August 06, 2008 3:43 PM
To: Tristan Riddell
Subject: Smyth Agricultural Revocation

Chief Knapp reviewed the proposal and has no problems with it.

Thank you,

Wendy Madsen
Administrative Asst.
Corvallis Rural Fire District
(406) 370-7126 cellular
(406) 961-4432 fax

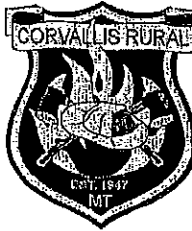
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Checked by AVG.
Version: 7.5.524 / Virus Database: 270.5.2/1561 - Release Date: 7/18/2008 6:35 PM

EXHIBIT A-1

8/6/2008

RECEIVED

JUN 02 2008
150806-715
Ravalli County Planning Dept.



CORVALLIS RURAL FIRE DISTRICT
PO BOX 13
CORVALLIS, MT 59828
(406) 961-4432

May 29, 2008

Planning Department
215 South 4th Street; Suite F
Hamilton, MT 59840

Re: Corvallis Rural Fire District/Subdivision Fees

To Whom It May Concern:

Enclosed please find a copy of our Resolution No. 08-04. After review of our actual expenses for hydrants, water tenders, and water supplies since inception of the subdivision fees, we have determined that we have spent over \$900.00 a lot for water supply. The Corvallis Rural Fire District has adopted Resolution 08-04 effective immediately and asks that you please change your documentation requesting \$500.00 a lot to \$900.00 a lot in lieu of a water source.

Thank you,

A handwritten signature in black ink, appearing to read "James B. Knapp".

Chief James Knapp
Corvallis Rural Fire District
(406) 360-4371

EXHIBIT A-2



CORVALLIS RURAL FIRE DISTRICT
PO BOX 13
CORVALLIS, MT 59828

RESOLUTION # 08-04

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CORVALLIS RURAL FIRE DISTRICT RELATING TO INCREASING SUBDIVISION FEES FOR WATER SUPPLIES:

WHEREAS, the district has imposed a fee for subdivisions without water systems so the district is able to purchase water carrying firefighting apparatus or develop water supplies; and,

WHEREAS, when establishing the requirements, emphasis was given to the Uniform Fire code, Articles 9 and 10, and Appendix III-S, the Ravalli County Subdivision Regulations, the Ravalli County Road Department standards, and the 1993 Fire Protection Guidelines for Wildland Residential Interface Development; and,

WHEREAS, in order for the Corvallis Rural Fire District to be properly equipped to protect life and property of the residents of the district, as well as the personnel who are called upon to protect the district, and to mitigate harm to the public health and environment; and

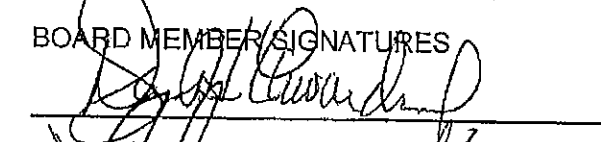
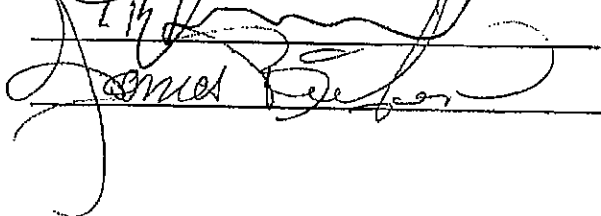
WHEREAS, the district has tracked expenditures for water carrying firefighting apparatus and developing water supply and feels the current subdivision fee is not adequate.

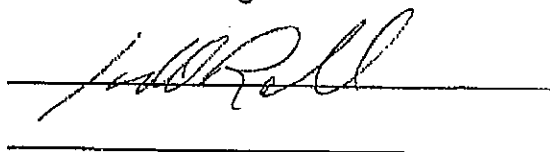
THEREFOR BE IT RESOLVED BY THE BOARD OF TRUSTEES THAT:

The Corvallis Rural Fire District has raised the required subdivision fee to \$900.00 per lot effective immediately.

PASSED AND APPROVED THIS 21st DAY OF May, 2008.

BOARD MEMBER SIGNATURES





CORVALLIS RURAL FIRE DISTRICT
PO BOX 13
CORVALLIS, MT 59828
(406) 961-4432

June 18, 2008

Planning Department/Ravalli County Commissioners
215 South 4th Street, Suite F
Hamilton, MT 59840

Via E-mail

Re: Corvallis Rural Fire District/Subdivision Fees

Carlotta Grandstaff,

Enclosed please find a copy of the spreadsheet we used to analyze our water expenses since the inception of subdivision fees. As you know, these fees are in lieu of water. Our analysis shows actual expenses and revenues which would back-up the increase in our fee.

The Corvallis Rural Fire District future plans entail creating 5 new fill sites and purchasing 2 more water tenders. Each site will cost \$35,000.00 - \$40,000.00, and each water tender will be in the \$150,000.00 range. If we accomplish these goals in the next 10 years, it would take over 500 lots at \$900 a lot to help pay for this.

The Corvallis Rural Fire District is committed to being consistent with the standards for development county wide, but financial impact will vary from one district to another and each district needs to determine what their per lot fee needs to be. One thing unique to Corvallis is that the Corvallis Rural Fire District owns and maintains our own hydrant system for the town. This increase in fee will be for our district only.

If this fee is more money than developers are willing to pay, we are always willing to accept the developer installing a water system that meets the water supply requirements per NFPA 1, Chapter 18.

Hopefully this takes care of any questions you may have.

Thank you,

Chief James Knapp
Corvallis Rural Fire District
(406) 360-4371

CORVALLIS RURAL FIRE DISTRICT
SUBDIVISION FEES ANALYSIS

SUBDIVISION REVENUES 2004 - 5/7/08	\$ 80,000.00	# LOTS 160
EXPENSES TOWARDS WATER:	AMOUNT	DATE DESCRIPTION
GASVODA CONSTRUCTION	\$ 4,593.24	2004 HYDRANT EXPANSION
HYDRANT REPAIR	\$ 4,195.00	2006 HYDRANT REPAIR
PAYMENTS ON 5020 2004 - PAYOFF	\$ 101,967.39	KENWORTH 2003 (WATER TENDER)
FILL SITE - STATION 2	\$ 34,866.34	2006-2007 FILL SITE STATION 2
TOTAL EXPENDITURES	\$ 145,621.97	
PER LOT EXPENSE	\$ 910.14	
FUTURE WATER EXPENSES:		
FILL SITES	\$ 200,000.00	(5 @ \$40,000.00)
APPARATUS (WATER TENDERS)	\$ 300,000.00	(2 @ \$150,000)
TOTAL FUTURE EXPENSES	\$ 500,000.00	
# OF LOTS AT \$900.00/LOT		556

USE for all
districts.

RECEIVED

SEP 13 2005

Hamilton
Rural Fire
DISTRICT

Consensus of All Valley Fire
Council.

Ravalli County Planning Dept.

TC-05-09-1707

Post Office Box 1994 Hamilton, MT 59840

FIRE PROTECTION STANDARDS

The following Fire Protection Standards were adopted on September 6, 2005.

The Hamilton Rural Fire District has established the Fire Protection Standards for proposed new subdivisions within the district. The requirements were established with consideration for the life and safety of the residents of the district, as well as the volunteer firemen who protect the district, and to mitigate possible harm to the general public.

In establishing the requirements, emphasis was given to the NFPA 1, Chapter 18, The Ravalli County Subdivision Regulations, The Ravalli County Road Department Standards, and the 1993 Fire Protection Guidelines for Wildland Residential Interface Development. These Publications and Articles establish rules for dealing with fire apparatus access roads, fire department access to buildings, water supplies for fire protection, installation and maintenance of fire - protection systems and clearance of brush and vegetative growth from roadways.

Consideration was also given to Section 23.7.105 Administrative Rules of Montana, which is adopted pursuant to authority of 50-3-102 (2) and 50-3-103, MCA, which incorporates by reference the NFPA 1, Chapter 18, and establishes a minimum fire prevention code for Montana.

Every effort has been made to use words and phrases consistent with the definitions given in the above-mentioned publications.

ACCESS ROADS

The Fire District requires that all roads and bridges meet or exceed, and are maintained to, the requirements of the NFPA 1, Chapter 18, which reads in part:

18.2.2.3.1 Required Access. Fire Apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet (45720 mm) from fire apparatus access as measured by an approved route around the exterior of the building or facility.

EXHIBIT A-3

18.2.2.5.1 Dimensions. Fire apparatus access roads shall have an unobstructed travel surface not less than 22-feet in width, which may included a two foot shoulder on each side of an 18-foot wide travel surface, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

18.2.2.5.2 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities.

18.2.2.5.6 Grade. The gradient for a fire apparatus access road shall not exceed the maximum approved by the fire chief. The Chief accepts the Resolution approved by the Board of County Commissioners of Ravalli County which sets the maximum acceptable road grade at ten percent (10%).

EXCEPTIONS: 1. When buildings are completely protected with an approved automatic sprinkler system, the provisions of NFPA 1, Chapter 18, may be modified by the Fire Chief.

While not all parts of the NFPA 1 are listed above it is the responsibility of the Subdivision Developer to construct and maintain all fire apparatus access roads to comply with all aspects of the NFPA 1 and Ravalli County Standards.

SPECIFIC REQUIREMENTS:

The Fire District requests that all lots (premises) meet the requirements of NFPA 1, Section 18.2.2.5.7 as soon as construction begins with a temporary or permanent address posted at the premises driveway and upon occupancy with a permanent address posted in accordance with the above NFPA 1.

BUILDING STANDARDS

The Fire District will request that all buildings be built to IRBC codes in order to protect persons and property, and that all subdivisions shall be planned, designed, constructed and maintained so as to minimize the risk of fire and to permit effective and efficient suppression of fires.

WATER SUPPLY

The water supply required by the NFPA 1 for one or two family dwellings, not exceeding 3,600 square feet, requires a flow rate of 1,000 G.P.M. The code does not specify the duration of flow for one and two family dwellings, however the Fire Protection Guidelines for Wildland Residential Interface Development and the Ravalli County Subdivision Regulations list the minimum water supply of 2,500 gallons per lot, or 1,000 gallons per minute flow from municipal water systems.

In order to obtain and maintain a Class 5 ISO rating, the Hamilton Volunteer Fire Department is required to flow 500 gallons and maintain this flow for 120 minutes. By ISO standards this is usually sufficient to protect single-family dwellings with adequate spacing between structures. ISO uses the following flow rates, from their *Guide for Determination of Needed Fire Flow*, Chapter 7, when considering adequate coverage for density:

Distance Between Buildings	Needed Fire Flow
More than 100'	500 gpm
31 - 100'	750 gpm
11 - 30'	1,000 gpm
10' or less	1,500 gpm

The Hamilton Rural Fire District will use these fire flows for all subdivisions of single-family dwellings with less than 10 lots. All developments of single-family dwellings with 10 or more lots require a minimum of 1,000 gallons per minute. All commercial, industrial, or multi-family dwellings requiring higher fire flows will have to be engineered by the developer to determine needed fire flows.

Any development in the rural area, with density requiring more than the 500 gallons per minute being supplied by the Hamilton Volunteer Fire Department, will be requested to supply the difference. The water supply installation, upkeep and maintenance will be the responsibility of the Subdivision, pursuant to NFPA 1, Section 18.3.5.

The Fire District realizes the financial burden of installing and maintaining a water supply and or storage tanks capable of providing the required water flows and is willing to accept a voluntary contribution payment of \$500.00 (Five Hundred Dollars) per lot, in lieu of the water supply required by the NFPA 1. Payment of \$500.00 per lot will be due upon approval of the subdivision. The Fire District will use funds paid in lieu of the water supply required by the NFPA 1 to maintain or improve fire protection within the district, for the development of water supplies, or capital improvements.

EXCEPTIONS: 1. When all buildings in the subdivision are completely protected with an approved automatic sprinkler system, the above listed water supply and in lieu of payment schedule may be reduced by 50% (fifty percent). The Subdivision Covenants must state that "All residences constructed within the subdivision will be protected with an approved automatic sprinkler system." Payment for the reduced amount of \$250.00 per lot will be accepted at the time the Subdivision is approved. If at any time any residence is built within the subdivision without an approved sprinkler system, all lots will be subject to an additional \$250.00 payment, regardless of whether they have sprinklers in residences located on them or not.

SUBDIVISION APPLICATION PACKET CHECKLIST - Water and Sanitation Information Per MCA 76-3-622

Name of Subdivision: SMITH REVOCATION OF AGSubdivider/Landowner Name(s): BOB SMITHConsultant Name: SPEC. ENG.Date Received: 7-15-08Sufficiency Review Due Date:

Yes	No	N/A	Item	Additional Information/Staff comments
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(1) Unless the land division is excluded from review under 76-4-125(2), the subdivider shall submit to the information listed below for proposed subdivisions that will include new water supply or wastewater facilities.

			Provide two copies of the following information with a check paid to RCEHD for their \$50.00 sufficiency review fee.	
			(a) Vicinity Map or Plan	
			(i) The location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:	
			(A) flood plains	
			(B) surface water features	
			(C) springs	
			(D) irrigation ditches	
			(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems	
			(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g);	
			(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d)	
			(ii) The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities	
			(b) A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by DEQ.	
			(c) A drawing of the conceptual lot layout at a scale no smaller than 1" = 200' that shows all information required for a lot layout document in rules adopted by the DEQ pursuant to 76-4-104.	

RECEIVED

JUL 15 2008

100007-871

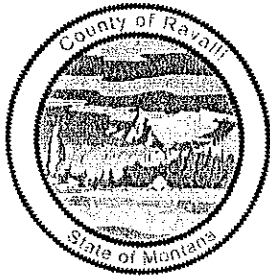
Ravalli County Planning Dept.

EXHIBIT A-4

Yes	No	N/A	Item	Additional Information/Staff comments
			(d) Evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:	
			(i) A soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by DEQ	
			(ii) Demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer.	
			(iii) In cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);	
			(e) For new water supply systems, unless cisterns are proposed, evidence of adequate water availability:	
			(i) obtained from well logs or testing of onsite or nearby wells;	
			(ii) obtained from information contained in published hydrogeological reports; <u>OR</u>	
			(iii) as otherwise specified by rules adopted by DEQ pursuant to 76-4-104;	
			(f) Evidence of sufficient water quality in accordance with rules adopted by DEQ pursuant to 76-4-104;	
			(g) A preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality.	The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

Handwritten signature

18-1033



Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840
Phone 406-375-6530
Fax 406-375-6531
planning@ravallicounty.mt.gov

OG-09-03-112

March 6, 2009

Howard Anderson, PE
Specialized Engineering
PO Box 535
Hamilton, MT 59840

RE: Floodplain Analysis - Smyth Subdivision, Willow Creek
Sec. 4, T6N, R20W
Parcel #158900, Geocode #1468-04-2-01-07-0000

Dear Mr. Anderson,

We have completed our review of the floodplain analysis according to Section 3-1-5 (a)(xl) of the effective Ravalli County Subdivision Regulations for the above proposed subdivision. After several discussions with Larry Schock, Regional Engineer for the Montana Department of Natural Resources and Conservation (DNRC), we concur with his review of the methodology used to calculate the 100-year flood and his suggestion that the method provides a "reasonable" representation of the 100-year floodplain for this reach of Willow Creek. To mitigate the impacts to public health and safety, agricultural water user facilities and to minimize the effects of development on the natural environment, we recommend the following conditions:

1. In an effort to protect property owners and mitigate future flood losses, a 25 foot setback (no build/alteration zone) should be established extending horizontally from both sides of the modeled/calculated 100-year floodplain for this reach of Willow Creek. The no build/alteration zone should be inclusive of both the modeled/calculated floodplain and the creek. (This setback far less than the 100 foot setback recommended in the Subdivision Regulations, but has been made to maintain consistency with the setback for the adjoining Brooks Hotel Subdivision.)
2. The lowest enclosed floor (including crawlspaces and basements) and mechanical utilities of all proposed structures should be located a minimum of two (2) feet above the modeled/calculated 100-year floodplain elevation or (2) feet above the highest adjacent grade (whichever is higher). A benchmark should be established within the proposed subdivision so that landowners and contractors can confirm that the two (2) foot elevation requirement has been met.
3. Any culverts, roads and/or bridges constructed across drainages within or adjacent to the proposed subdivision should be adequately sized and maintained to convey floodwaters, avoid the obstruction of debris and ensure safe and dry access for property owners or emergency services.
4. Although the proposed subdivision is not currently located within a FEMA-mapped floodplain, it is strongly recommended that the property owners obtain flood insurance

EXHIBIT A-5

since standard homeowner's insurance policies do not cover flood damages.

Consequently, the floodplain analysis for the proposed subdivision is conditionally approved and all recommendations should be appropriately considered.

If you have any questions, please feel free to contact our office.

Sincerely,



Laura Hendrix, CFM
Ravalli County Floodplain Administrator



John Lavey
Ravalli County Planning Director

Cc: Correspondence File - General
Tristan Riddell, Ravalli County Planner (w/map enclosed)
Floodplain Analysis File



Montana Fish, Wildlife & Parks

Region 2 Office
3201 Spurgin Road
Missoula, MT 59804-3099
406-542-5500
September 4, 2008

Tristan Riddell
Ravalli County Planning Department
215 S. 4 St., Ste. F
Hamilton, MT 59840

Reference: Smyth--Proposed revocation of agricultural covenant, Corvallis

Dear Mr. Riddell:

We have reviewed the topographic map and the portion of the certificate of survey for this proposal to remove an agricultural covenant in order to develop the lot by building a church, and our comments follow.

Wildlife

Although the proposed development lot is located just outside Corvallis, there are nearby agricultural fields, and Willow Creek and its associated riparian areas form the western boundary. We believe there is a general likelihood of human/wildlife interactions at this location. In particular, wildlife such as white-tailed deer, fox, skunk, and magpie could be found in the area, as well as an occasional black bear or possible mountain lion. Numerous small mammal and bird species would also be found nearby. If any covenants or agreements are required for this lot, then we also recommend that "living with wildlife" issues be conveyed to future residents. Adherence to those guidelines should help these residents deal with and avoid conflicts with wildlife. We have enclosed our recommended version of such covenants.

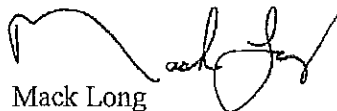
Willow Creek

From what we know at this point (without research into the issue), we believe Willow Creek used to flow further north through Corvallis, but due to flooding was moved to where it is now. We are not aware of any other channel that connects upper Willow Creek to the Bitterroot River. Therefore, we believe this section of Willow Creek adjacent to this subdivision should be protected.

1. The centerline of Willow Creek appears to be the eastern boundary of this subdivision, but we do not see a building setback or riparian buffer zone for this creek. In order to better protect Willow Creek, we recommend that this lot have a 100-foot no-build zone from the high-water mark on the west side of Willow Creek. Within the first 50-feet from the creek (high-water mark) we recommend a buffer zone with more restrictions, allowing only weed control, footpaths (i.e., non-motorized activities) and no riparian vegetation disturbance.
2. We recommend requiring riparian covenants for this lot to control use of the area next to Willow Creek, in order to preserve water quality and functionality of a natural stream, and for protection of properties from eroding banks and possible flooding.
3. Does this land currently have water rights to Willow Creek? If "yes," then will these water rights be used by the lot, and if so, for what purposes? Water rights have a specific beneficial use, and any current beneficial uses are likely for irrigation and/or stock water rights for agriculture. It would be erroneous to assume that these rights would automatically be valid for other uses such as lawn and garden irrigation or fishponds. Presence or absence of water rights to Willow Creek should probably be addressed in the covenants. If no water rights exist for--or are not being transferred to--the property, then the covenants should clearly state that water cannot be diverted from the stream for any use, and that residents should consult with the Montana Department of Natural Resources and Conservation for questions on water rights.

Thank you for providing the opportunity for FWP to comment on this subdivision.

Sincerely,



Mack Long
Regional Supervisor

ML/sr

Covenants for Smyth agricultural revocation subdivision, recommended by Montana Fish, Wildlife & Park; Missoula; September 4, 2008

Section __: Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the presence of wildlife such as white-tailed, black bear, mountain lion, coyote, fox, skunk, raccoon, and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens, fruit trees** or orchards can attract wildlife such as bear and deer. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or organic material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries.
- c. **Garbage** must be stored in secure animal-resistant containers or indoors to avoid attracting animals such as raccoon, black bear, and other wildlife. If stored indoors, it is best not to set garbage cans out until the morning of garbage pickup; bring cans back indoors by the end of the day.
- d. **Do not feed wildlife** or offer supplements (including salt blocks), attractants, or bait for deer, sheep or other wildlife, including during the winter. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer can attract mountain lions to the area.

- e. Bears can be attracted to food smells associated with **outdoor food storage**; therefore, freezers and refrigerators should not be placed outdoors on porches or in open garages or buildings. If a freezer/ refrigerator must be located outdoors, attempt to secure it against potential bear entry by using a stout chain and padlock around the girth of the freezer.
- f. **Birdseed** in bird feeders attracts bears. If used, bird feeders should: 1) be suspended a minimum of 20 feet above ground level, 2) be at least 4 feet from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- g. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Keeping pets confined also helps protect them from predatory wildlife. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124).
- h. **Pet food and livestock feed** must be stored indoors, in closed sheds or in bear-resistant containers in order to avoid attracting wildlife such bears, mountain lion, skunk, and raccoon. **When feeding pets and livestock**, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- i. **Barbecue grills** should be stored indoors when not in use. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife. (Due to the potential hazard of fire and explosion, propane cylinders for gas-fueled grills should be disconnected and kept outdoors. Under no circumstances should propane cylinders be stored indoors.)
- j. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail) and no lower than 18 inches (at the bottom rail) in order to facilitate wildlife movement. Barbed wire fences are not allowed in this subdivision, and this should avoid animals such as deer and/or elk becoming entangled in the wire or injuring themselves when trying to jump the fence.
- k. **Compost piles** can attract skunks and bears. If used they should be kept in wildlife-resistant containers or structures. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Due to the potential fire hazard associated with decomposition of organic materials, compost piles should be kept at least 10 feet from structures.)
- l. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- m. These wildlife covenants cannot be changed or eliminated without the concurrence of the governing body (Ravalli County Commissioners).

Section __: Riparian Area Use

Along the western edge of Willow Creek is a 100-foot *no-build* setback (zone) from the *high-water mark*. The first 50 feet outward from creek's high water mark is additionally designated as a no-build, no-development "*buffer zone*." The following restrictions apply to the buffer zone and/or the entire 100-foot no-build zone, as listed:

1. No building, no new roads or alteration is allowed in the buffer zone. Additionally, no buildings are allowed in the entire 100-foot no-build setback zone.
2. No motorized use is allowed in the buffer zone. Only foot traffic is allowed in the buffer zone.
3. It is illegal to modify the streambed or streambanks of a perennial stream without a "310" permit (Montana Natural Streambed and Land Preservation Act). Any stream crossings need to follow any and all local and/or state regulations relative to bridge/culvert construction materials/methods. Certain other actions near a stream may require state and/or federal permit(s). Contact the Bitterroot Conservation District office for further information.
4. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the buffer zone. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover. Wood also stores sediment that is used for spawning. Dead trees also function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
5. Do not plant lawns in the buffer zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
6. In summary, allow riparian areas (the creek and its buffer zone) to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
7. These riparian covenants cannot be altered or eliminated without consent of the governing body (county commissioners).

July 31, 2008

Re: Sensitive Species waiver, Smyth Agricultural Covenant Revocation

John-


I reviewed the Sensitive Species Wavier request prepared for the Smyth Agricultural Covenant Revocation on July 31, 2008. Montana Natural Heritage Program data indicated that the only the Grey Wolf, Bald Eagle, Fringed Myotis, Townsend's Big-Eared Bat, and Bull Trout are located within the section. The waiver request states that the subject property does not provide suitable habitat for the aforementioned species.

Based on the proximity to the community of Corvallis and the lack of suitable habitat for the listed species, I would recommend granting of the waiver request.

Please find attached the waiver request from Applebury Survey and the MNHP data and map.

Please review and provide comment.

Thank you-



Tristan

EXHIBIT A-7

waiver granted
Aug 21, 08
SP

Tristan Riddell

From: mapakenny@gci.net on behalf of Debbie Kenny [mapakenny@gci.net]
Sent: Monday, April 13, 2009 12:10 PM
To: Tristan Riddell
Subject: Smyth Agrucultural Covenant Revocation

To: Tristan Riddell
From: Dave and Debbie Kenny
RE: Smyth Agricultural Covenant Revocation in Corvallis, Montana OG-09-04-186

This e-mail is to let you know we are aware of the proposal to sell the lot next door to us for use as a church. We are in support of this happening, and have no problems with the agricultural covenant being changed so this can happen.

We would like to know what decision is reached on the April 30th meeting as this does affect us as neighbors as well.

Sincerely,
Dave and Debbie Kenny
370 Anna Street
Palmer, AK 99645

907 232 2465

EXHIBIT B-1

4/13/2009